

Message Text

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ARA/ECP:DTAHER (PHONE)

L:FWILLIS (PHONE)

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FM SECSTATE WASHDC

TO AMEMBASSY SAN SALVADOR IMMEDIATE

INFO AMEMBASSY TEGUCIGALPA

AMEMBASSY MANAGUA

AMEMBASSY SAN JOSE

AMEMBASSY GUATEMALA

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E.O. 11652: N/A

TAGS: EINV, ECON

SUBJECT: STATUS OF DRAFT INSURANCE LAW

REF: SAN SALVADOR 3777

1. EMBASSY'S RECOMMENDED DEMARCHE (REFTEL) ON DRAFT
INSURANCE LAW IS APPROVED. DEMARCHE SHOULD BE IN THE
SAME INFORMAL ORAL MANNER AS ONE IN JANUARY 1976,
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EMPHASIZING LAW'S POTENTIAL ADVERSE EFFECT ON INVESTMENT

CLIMATE (POINTS C AND D REFTTEL) AND THE ADVANTAGES THAT FOREIGN CAPITAL CAN BRING TO ENTIRE PRIVATE SECTOR.

2. DEPARTMENT HAS GIVEN CONSIDERATION TO ISSUES OF WHETHER THE PRESENT DRAFT LAW'S DIVESTMENT PROVISIONS ARE EXPROPRIATORY AND WHETHER THE INSURANCE COMPANIES MIGHT POSSIBLY HAVE RECOURSE TO SECTION 301 OF THE TRADE ACT. (POSSIBLE RECOURSE TO SECTION 301 RAISED BY INSURANCE COMPANIES IN RECENT MAILGRAM TO ASST. SECRETARY SHLAUDEMAN).

3. DEPARTMENT DOES NOT BELIEVE THAT SIX-MONTH INCORPORATION AND FIVE-YEAR EQUITY TRANSFER PROVISIONS, AS PRESENTLY DRAFTED, ARE EXPROPRIATORY, ALTHOUGH THEY CERTAINLY ARE ONEROUS. IF AS A PRACTICAL MATTER ADHERENCE TO THE PROVISIONS OF THE LAW, IF ENACTED IN ITS PRESENT FORM, FORCES THE COMPANIES INTO DISTRESS SALES IN THE FUTURE,

THEN THE LAW MAY BE HELD TO HAVE COMPELLED SALES FOR LESS THAN FAIR MARKET VALUE. WHILE THE EMBASSY'S DEMARCHE SHOULD NOT ADDRESS THIS EVENTUALITY, WE ARE NOT FORECLOSING THE POSSIBILITY OF RAISING THE ISSUE IN THE FUTURE. AS FOR POSSIBLE APPLICABILITY OF SECTION 301 IN VIEW OF THE LEGAL UNCERTAINTIES SURROUNDING WHAT MIGHT EVENTUATE IN GOES PROPOSED LEGISLATION, IT WOULD BE UNWISE TO ADDRESS ISSUE OF APPLICABILITY OF 301 TO THIS CASE. EMBASSY SHOULD AVOID ISSUE OF SECTION 301 IN DEMARCHE. KISSINGER

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